

PROGRAMMING AGREEMENT

THIS PROGRAMMING AGREEMENT (this “*Agreement*”) is made as of April 1, 2011, the (“*Effective Date*”), between **MTB SAN FRANCISCO OPERATING LLC**, a Delaware limited liability company (hereafter referred to as the “*Licensee*”) and **SINO TELEVISION, INC.**, a New York corporation (“*Programmer*”).

RECITALS

A. Licensee is the sole member of MTB San Francisco Licensee LLC, which is the licensee of the following television station (the “*Station*”) pursuant to authorizations issued by the Federal Communications Commission:

KCNS, San Francisco, California (FCC Facility ID No. 71586).

B. Programmer has available to it and/or is producing television programs that it desires to have broadcast on the Station, and therefore desires to access from Licensee airtime on the Station for the broadcast of such programs.

C. Licensee has agreed to make available or cause to be available to Programmer on a 24/7 basis, all airtime on the Station’s Digital Sub-channel and accept for broadcast the programs of Programmer on the terms and conditions set forth in this Agreement.

D. Capitalized terms used in this Agreement shall have the meanings ascribed to them in **Exhibit 4**, attached hereto.

AGREEMENT

NOW, THEREFORE, taking the foregoing recitals into account, and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. *Agreement Term and Renewal Option.* The Initial Term of this Agreement will begin effective as of 12:01 a.m. Pacific Time on [REDACTED] (the “*Commencement Date*”), and shall continue until the earlier of (a) [REDACTED]

[REDACTED] prior to the expiration of the Initial Term.

2. *Programmer’s Purchase of Airtime and Provision of Programs.* During the Initial Term and Renewal Term, if applicable, Programmer shall obtain from Licensee

and have access to airtime on the Station's Digital Sub-Channel on a 24/7 basis upon the terms specified below, and shall transmit or provide to Licensee the Programs for broadcast during the Broadcasting Period. Programmer will furnish, at its own cost, its Programs to the Station's Main Studio via a mode that ensures that the Programs meet technical and quality standards consistent with general broadcast industry standards. Licensee will transmit, at its own cost, the Programs to the Station's transmitting facilities on Digital Sub-Channel, *provided, however*, that Programmer may, at its election and own cost, upon advance notice to Licensee, transmit the Programs directly to the Station's transmitting facilities in lieu of to the Main Studio.

2.1. **Payments.** For the broadcast of the Programs and the other benefits made available to Programmer pursuant to this Agreement, during the Initial Term and Renewal Term, if applicable, Programmer will pay Licensee as set forth on **Schedule A** attached hereto.

3. **Broadcasting and Operating Obligations.** In return for the Programmer providing its Programs hereunder during the Initial Term and Renewal Term (if applicable), Licensee shall on its Digital Sub-Channel, cause the broadcast of the Programs delivered by Programmer during the Broadcasting Period, subject to the provisions of **Section 6** below. During the Term of this Agreement, [REDACTED]

3.1. **Programming Commitment and Content Procedures.** The programming to be provided by Programmer to the Station shall comply with the Act and Rules and Regulations. Programmer shall, to the extent reasonably possible, provide Licensee with a copy of its planned programming schedule at least twenty-four (24) hours in advance of broadcast. When Foreign Language Programs are scheduled, Programmer shall, upon request from Licensee, provide to Licensee an English language transcript (within seven (7) Business Days of the request) and an audio copy of the Foreign Language Programs. Licensee, solely for the purpose of ensuring Programmer's compliance with the Act, the Rules and Regulations, and other requirements of this Agreement, shall be entitled to review at Licensee's sole discretion from time to time on a confidential basis any programming material and any other documents Licensee may reasonably request, including all rate cards and disclosure statements related to Programmer's political advertising, if any. Licensee's failure to preempt any programming material shall not relieve Programmer's obligation to comply with the Act, the Rules and Regulations and the other requirements of this Agreement. Upon request, Programmer shall promptly provide Licensee with copies of all program logs and promotional materials pertaining to the Programs.

3.1.1. **Licensee's Option.** Throughout the term of this Agreement Licensee shall make the Station's Digital Sub-Channel available to Programmer for operation with full facilities for one hundred sixty-eight (168) hours per week, Sunday

through Saturday, except for downtime occasioned by routine maintenance. Licensee, upon thirty (30) days prior written notice to Programmer, may initiate Programming Reclamation. A Programming Reclamation shall cause a Master Fee Adjustment. Nothing in this provision shall in any way modify or restrict, or be construed to modify or restrict, the Licensee's rights as provided in **Section 6.2**, including its subparts, of this Agreement. Moreover, a Master Fee Adjustment shall not apply to Licensee's programming changes or substitutions implemented pursuant to **Section 6.2.1**.

3.1.2. ***Political Broadcasts.*** Programmer shall maintain and deliver to Licensee all records and information required by the FCC to be placed in the Local Public File of the Station pertaining to the broadcast of political programming and advertisements on the Digital Sub-Channel, in accordance with all applicable statutes and regulations, including, without limitation, Sections 73.1940 through 73.1944 and 73.3526 of the Rules and Regulations, and to the broadcast of sponsored programming addressing political issues or controversial subjects of public importance, in accordance with all applicable statutes and regulations, including, without limitation, Section 73.1212 of the Rules and Regulations. Programmer shall provide to Licensee documentation relating to such political programming as Licensee may reasonably request.

3.1.3. ***Handling of Communications.*** Programmer shall receive and use reasonable effort to respond to all Program Pertinent Communications. Programmer promptly shall advise Licensee of any public or FCC complaint or inquiry made known to Programmer concerning such Programs, and shall make available to or provide Licensee, upon request, copies of any letter or e-mail correspondence received by Programmer from the FCC or the public concerning the foregoing. Programmer shall timely respond to all Program Pertinent Communications, as it deems appropriate; *provided*, however, that Licensee shall respond to any and all inquiries or communications received from the FCC.

3.1.4. ***Children's Programming.*** Programmer agrees that it will provide all programming necessary, to comply with the children's programming requirements as specified by the Rules and Regulations. Programmer shall be responsible for providing to Licensee information and documentation with respect to the children's programming that Programmer broadcasts on the Digital Sub-Channel to assist Licensee in preparing all reports and certifications required to be submitted to the FCC or placed in the Station's Local Public File, including the following: (a) Licensee's quarterly reports on children's programming pursuant to Section 73.3526(e)(11)(iii) of the Rules and Regulations; and (b) Licensee's statements with respect to compliance with advertising limits in children's programs pursuant to Section 73.3526(e)(11)(ii) of the Rules and Regulations. Programmer shall provide the Licensee with information regarding the titles of all children's

programs of Programmer broadcast on the Digital Sub-Channel in the previous quarter to which the advertising limits apply, all program segments during which the allowed commercial limits were exceeded, if any, and a separate memo explaining why any excesses occurred in the event that excesses occurred. In carrying out its obligations with respect to children's programming, Programmer shall further maintain records with respect to commercial matter in children's programming either in the form of logs of programs reflecting the commercial time, tapes of the programs, lists of commercial minutes aired in identified children's programs, or appropriate certificates from syndicators with respect to compliance with the Rules and Regulations pertaining to commercial limits. Licensee shall respond to any FCC inquiries concerning children's programming issues with the reasonable assistance of Programmer.

3.1.4.1. ***Children's Television Advertising.*** Programmer will not broadcast commercial matter within the programs that Programmer provides that are designed for children aged twelve (12) years and under that would cause the Station to exceed the amounts permitted under, or otherwise violate, the Rules and Regulations and will take all steps necessary to pre-screen children's programming broadcast during the hours Programmer is providing such programming to establish that commercial matter is not being broadcast in excess of the limits provided in the Rules and Regulations.

3.2. ***Assignment of Receivables.*** In the event this Agreement is terminated due to Programmer's default on timely payment of the Master Fee pursuant to **Schedule A**, then on, and as of, the Termination Date Programmer shall assign to Licensee and Licensee shall assume Programmer's Receivables in an amount equal to one hundred fifty percent (150%) of the amount of the Master Fee payment(s) that are in default. Upon collection of the full amount owed, Licensee shall reassign to Programmer such of Programmer's Receivables, that were previously assigned to Licensee pursuant to this **Section 3.2**, as remain outstanding.

3.3. ***Sub-Channel Utilization.*** Programmer shall have access to the Station's Digital Sub-Channel and may operate the Digital Sub-Channel, in Programmer's reasonable discretion.

3.3.1. ***Sublease Conditions.*** Programmer shall not broker or sublease programming blocks of Digital Sub-Channel to any third party during the Term without giving prior written notification to Licensee. It is understood and agreed that Programmer shall have the right to broker or sublease programming blocks on the Digital Sub-Channel to any third party during the Term, *provided* that Programmer agrees to indemnify Licensee for any and all claims resulting from any third-party programming blocks. .

4. **Advertising Sales.** Programmer shall have the exclusive right to sell advertising in connection with its Programs and to derive all revenues from the Digital Sub-Channel. Programmer shall be exclusively responsible for the sale of and collection for all advertising on the Digital Sub-Channel as of the Commencement Date. In the event Licensee receives payment respecting any of Programmer's Receivables, then Licensee shall remit (in any event not more than five (5) Business Days after receipt) to Programmer any such payment respecting Programmer's Receivables. In the event Programmer receives payment respecting any of Licensee's Receivables, then Programmer shall remit (in any event not more than five (5) Business Days after receipt) to Licensee any such payment respecting Licensee's Receivables.

5. **Operating Expenses.** The Programmer and Licensee each shall be responsible for their own expenses, as follows:

5.1. **Programming Expenses.** During the Term, Programmer shall be responsible for all costs associated with the production, development and promotion of all the Programmer's Programs that are broadcast on the Digital Sub-Channel, including (i) the salaries, taxes, insurance and related costs for all personnel used in the production of the Programs supplied to Licensee, and (ii) all costs associated with the delivery of the Programs to Licensee.

5.2. **Sales Expenses.** During the Term Programmer shall be responsible for all costs associated with the Programmer's sale of advertising that is broadcast on the Digital Sub-Channel, including (i) the salaries, taxes, insurance and related costs for all personnel used in the sale of advertising on Digital Sub-Channel, and (ii) the costs of commissions and agencies involved with the sale of advertising on the Digital Sub-Channel.

5.3 **Operating Expenses.** During the Term, Licensee shall be responsible for all costs associated with the general and technical operation of the Digital Sub-Channel, subject to the breadth and limitations of Operating Expenses defined in **Schedule A**, including the maintenance of all studio and transmitter equipment and all other operating costs required to be paid to maintain the Station's transmission operations in accordance with the Act and the Rules and Regulations. Licensee also will pay, or cause to be paid, all utilities supplied to its Main Studio and transmitter sites. Licensee will facilitate the broadcast transmissions of the Programs (once received at its Main Studio or transmitter site) and will be responsible for the salaries, taxes, insurance and related costs for all such personnel necessary to maintain the technical and transmitter site transmission operations of the Station.

5.4. **Insurance.**

5.4.1. **Licensee's Obligation.** Licensee shall maintain in full force and effect during the Term insurance with a reputable insurance company(ies) in such

amounts as are reasonable and appropriate to cover the Licensee's ownership of the physical facilities and transmitting equipment of the Station's Digital Sub-Channel. Any insurance proceeds received by Licensee in respect of damaged property will be used to repair or replace such property.

5.4.2. ***Programmer's Obligation.*** Programmer shall maintain in full force and effect during the Term, insurance with a reputable insurance company(ies) covering broadcaster's general liability, including invasion of privacy, libel and defamation claims, with respect to the Programming Programmer broadcasts on the Digital Sub-Channel.

6. ***Operation, Ownership and Control of the Station.*** Notwithstanding anything to the contrary in this Agreement, as long as Licensee remains the Licensee of the Station, it will have full authority, power and control over the operation of the Station's Digital Sub-Channel and over all persons working at the Station during the Initial Term and Renewal Term, if applicable. Licensee will bear the responsibility for the Station's compliance with all applicable provisions of the Rules and Regulations and all other applicable laws. Nothing in this Agreement shall abrogate the unrestricted authority of the Licensee to discharge its obligations to the public and to comply with the Act and the Rules and Regulations.

6.1. ***Employees.*** Without limiting the generality of the foregoing, Licensee at a minimum will employ the requisite personnel needed to properly staff and operate the Station.

6.1.1. ***Public Disclosure regarding Station Control.*** In no event shall Programmer, nor shall Programmer's employees, depict, describe, portray or represent Programmer as the Licensee of the Digital Sub-Channel.

6.2 ***Programming and Operational Oversight.*** Licensee shall retain control over the policies, programming and operations on the Digital Sub-Channel. Nothing contained herein shall prevent Licensee from (a) rejecting or refusing programs which Licensee believes to be contrary to the public interest, or (b) substituting programs which Licensee reasonably believes to be of greater local or national importance or which are designed to address the problems, needs and interests of the local communities; *provided*, that Licensee shall exercise this right solely to reasonably fulfill its obligations as an FCC Licensee and not for its own commercial or economic advantage.

6.2.1. ***Rejected Programs.*** In the event that Programmer's programming (x) violates the terms of this Agreement, or (y) violates standards for decency as generally recognized in the community or established by the FCC, or (z) fails to reasonably address local, regional or national events in the case of a local, regional or national emergency or calamity, then Licensee reasonably may (i) preempt Pro-

grammer's programming and (ii) substitute its own programming, and in such case Programmer shall not be entitled to any monetary reimbursement for such programming substitutions. Licensee reserves the right to refuse to broadcast any Program containing matter which violates any right of any third party or which constitutes a "personal attack" as that term previously has been defined by the FCC. Licensee further reserves the right to refuse to broadcast any Program which does not meet the requirements of the Rules and Regulations or the regulations and restrictions set forth in **Section 10**.

6.2.2. *Reimbursement for Certain Preempted Programs.* Except for preempted Programs that meet the conditions in **Section 6.2.1**, above, if Licensee preempts any Programs in any month, then Programmer shall be entitled to and shall receive a Master Fee Adjustment as the result of any such preempted Programs. Licensee further reserves the right to preempt any Program in the event of a local, state, or national emergency. Programmer agrees to cooperate with Licensee to ensure that Emergency Alert System transmissions are properly performed in accordance with Licensee's instructions and are incorporated into Programmer's Programs and broadcast in accordance with the Rules and Regulations. Licensee reserves the right to delete any commercial announcements that do not comply with the requirements of the FCC's sponsorship identification policy. Programmer will immediately serve Licensee with notice and a copy of any letters of complaint it receives concerning any Program for Licensee review and inclusion in its Local Public File, if required. Programmer shall provide Licensee with information concerning the broadcast of children's educational and informational programming; and documentation of compliance with commercial limits applicable to certain children's television programming. Licensee shall (i) maintain its Local Public File within San Francisco, California, and (ii) prepare and place in such inspection file in a timely manner all material required by Section 73.3526 of the Rules and Regulations, including without limitation the Station's quarterly issues and program lists; information concerning the broadcast of children's educational and informational programming; and documentation of compliance with commercial limits applicable to certain children's television programming. Programmer shall provide Licensee with such information concerning Programmer's programs and advertising as is necessary to assist Licensee in the preparation of such information or to enable Licensee to verify independently the Station's compliance with the Children's Television Act and/or any other laws, rules, regulations or policies applicable to the Station's operation.

6.2.3. *Public Affairs Programming.* Notwithstanding any other provision of this Agreement, Programmer recognizes that Licensee has certain obligations to broadcast programming to meet the needs and interests of the Station's community of license. Nothing in this Agreement shall abrogate the unrestricted authority of Licensee to discharge its obligations to the public and to comply with the Act or

the Rules and Regulations with respect to meeting the needs and interests of the public.

6.3. **Capital Expenditures.** Except as provided herein, Licensee shall be responsible for all capital expenditures reasonably necessary to continue operation of the Station, including the Digital Sub-Channel.

7. **Maintenance of Digital Sub-channel Signal.** Throughout the Term, Licensee, at its expense, shall exercise its commercially-reasonable best efforts to maintain the operating power of the Station and Station's digital sub-channels at the maximum level authorized by the FCC for the Station and shall repair, maintain, and replace the Station's tower, transmitter and Main Studio site equipment and facilities as necessary for them to be in good working order. Notwithstanding the foregoing, Programmer shall reimburse and pay Licensee for any actual damage or loss caused as a result of Programmer's misuse of the Station's facilities, if applicable. Licensee shall be responsible for ordinary wear and tear.

8. **Licensee's Premises.** If requested by Programmer, Licensee shall provide Programmer limited access to the Main Studio as is reasonably necessary for Programmer to reasonably exercise its rights and perform its obligations under this Agreement. Such use and access of Licensee's premises shall be without additional consideration or payment by Programmer, but shall be in consideration of the Programmer's prompt and timely payment of the Master Fee. When on Licensee's premises, Programmer's personnel shall be subject to the direction and control of Licensee's management personnel and shall not act contrary to the terms of any lease for the premises.

8.1. **Studio Location.** The Main Studio location shall be consistent with Section 73.1125 of the Rules and Regulations. In the event Licensee is obligated to relocate the Main Studio, then such location also shall be consistent with Section 73.1125 of the Rules and Regulations.

9. **Performance Licenses.** During the Term, Licensee will obtain and maintain in full force and effect in its own name all Performance Licenses as are necessary to lawfully broadcast the Programs on the Digital Sub-Channel and as will be required by the licensor of those Performance Licenses, provided, however, that no modifications, extensions, or renewals of such existing license arrangements and no new license arrangements that will pertain to the Programmer's Programs will be entered without Programmer's direct involvement in the process of obtaining and prior review of the terms of such license arrangements. All Performance Licenses' fees incurred by Licensee during the Term that are attributable to the Programs shall be reimbursed promptly by Programmer to Licensee.

9.1. **Authority to Broadcast and Compliance with Copyright laws.** Programmer represents and warrants to Licensee that Programmer has full authority to broad-

cast its programming on the Station and Programmer shall not broadcast any material in violation of any law, rule, or regulation, including all applicable laws, rules and regulations pertaining to copyright.

10. *Programs.*

10.1. *Production or Dissemination of the Programs.* Programmer agrees that the content of the Programs it furnishes to Licensee shall conform to the Rules and Regulations. Programmer agrees that it will consult with Licensee in the selection of the Programs it furnishes to Licensee to ensure that the Programs' content contains matters responsive to issues of public concern in the local communities, as those issues are made known to Programmer by Licensee. Licensee acknowledges that its right to broadcast the Programs on the Digital Sub-Channel is non-exclusive and that ownership of the Programs, and all parts thereof, and the right to authorize their use in any manner and in any media whatsoever, shall be and remain vested in Programmer.

10.1.1. *Program Inquiries.* Programmer shall cooperate fully with Licensee in responding to any question, comment, inquiry or complaint from any third party, including any governmental authority or agent thereof, that may relate to or arise from the Station or the operations of Programmer or Licensee. In the event of Programmer's receipt of any question, comment, inquiry or complaint that may relate to or arise from the Digital Sub-Channel or the operations of Programmer, Programmer shall promptly notify Licensee of the same.

10.2. *Political Time.* Licensee shall oversee and take ultimate responsibility with respect to the provision of equal opportunities, lowest unit charge, and reasonable access to political candidates, and compliance with the political broadcast rules of the FCC. During the Term, Programmer shall cooperate with Licensee as Licensee complies with its political broadcast responsibilities, and shall supply such information promptly to Licensee as may be necessary to comply with the political time record keeping and lowest unit charge requirements of federal law. Programmer shall release advertising availabilities to Licensee during the Broadcasting Period as necessary to permit Licensee to comply with the political broadcast rules of the FCC.

11. *Call Signs.* During the Term, Licensee will retain all rights to the call letters of the Digital Sub-Channel or any other call letters which may be assigned by the FCC for use by the Station and its digital sub-channels, and will ensure that proper station identification announcements are made on the Digital Sub-Channel with such call letters in accordance with the Rules and Regulations. Programmer shall include in the Programs it delivers for broadcast an announcement at the beginning of each hour of such Programs to identify such call letters and the Station's community of license, as well as any other announcements required by the Rules and Regulations. Programmer is specifically authorized to use such call letters in its Programs and in any promotional material, in any media, used in connection with the Programs.

12. Events of Default.

12.1. **Programmer's Events of Default.** The occurrence of any of the following will be deemed an Event of Default by Programmer under this Agreement: Programmer (a) fails to make timely payments of any Master Fee installment, as provided for in this Agreement; or (b) fails to observe or perform its other obligations contained in this Agreement in any material respect; or (c) breaches its representations and warranties made under this Agreement.

12.2. **Licensee Events of Default.** The occurrence of the following will be deemed an Event of Default by Licensee under this Agreement: Licensee (a) fails to observe or perform its obligations contained in this Agreement in any material respect; or (b) breaches its representations and warranties made under this Agreement in any material respect.

12.3. **Cure Period.** Notwithstanding the foregoing, and except as provided in **Section 5 of Schedule A**, hereto, an Event of Default will not be deemed to have occurred until ten (10) calendar days after the non-defaulting Party has provided the defaulting Party with written notice specifying the Event of Default and such Event of Default remains uncured.

13. Termination.

13.1. **Non-Default Termination.** This Agreement may be terminated by the Parties, as provided by this Section and its subparts, if no default has occurred and without fault or further obligation to the other Party in the following circumstances:

13.1.1. **License Termination or Modification.** By either Party if the main operating authority for the Station's primary or the Digital Sub-Channel is terminated, for whatever reason, by the FCC or other federal agency, and the order of termination has become a Final Order.

When in such event, Licensee shall have the right to terminate this Agreement upon three (3) months advance written notice to Programmer.

13.1.2. **Termination for Change in the Rules and Regulations.** The Parties believe that the terms of this Agreement comply in all respects with current FCC policies for brokerage or programming agreements of this type and agree that they shall negotiate in good faith to meet any FCC concern with respect to it if they are incorrectly interpreting current Rules and Regulations, or if the Rules and Regulations are modified. If the Parties cannot agree within a forty-five (45) day period, or such other period as the Parties may mutually set, to modification or modifica-

tions deemed necessary by either Party to meet FCC requirements, either Party may terminate this Agreement without payment of any termination fee by giving the other Party forty-five (45) days' written notice of termination.

13.1.3. *Station's Sale, Pending Sale and Assignment.* This Agreement shall automatically terminate upon the occurrence of a Closing Event, unless both parties agree to assign this Agreement to the buyer of Station. Notwithstanding anything to the contrary contained in this Agreement, the pending sale to NRJ TV SanFran OpCo, LLC or its affiliate, subsidiary, assign or designee shall not be deemed a Closing Event and this Agreement shall be automatically assigned upon the closing of such pending sale without any additional consent or assignment needed.

13.1.4 [REDACTED] Programmer may terminate this Agreement by giving thirty (30) days' written notice thereof to Licensee in the event that [REDACTED]

13.1.5 *Actions re: Non-Default Termination.* In the event of a termination in accordance with this Section and its subparts, the Parties may promptly recover any equipment respectively owned by them and, except as provided by **Section 13.3** and **Schedule A**, shall have no further obligation to otherwise pay further compensation or provide services as set forth in this Agreement.

[REDACTED]

[REDACTED] If Licensee elects, at any time during the Term, to [REDACTED] Licensee will so notify Programmer in writing within ten (10) days of its decision. If [REDACTED] Licensee will notify Programmer in writing within ten (10) days of such [REDACTED] In either case, following receipt of such notice, Programmer may, at its option, (1) continue to utilize the Leased Spectrum pursuant to the terms of this Agreement until such time as [REDACTED] or (2) if [REDACTED] Programmer may at any point thereafter terminate this Agreement by giving not less than one hundred twenty (120) days written notice to Licensee.

13.1.6.1.1. *Programmer's Option* [REDACTED]. If [REDACTED] then subject to Licensee's [REDACTED], Programmer may elect to [REDACTED]

13.3. *Events Upon Termination or Expiration.*

13.3.1. ***Obligations.*** Upon any termination or expiration of this Agreement: (i) Licensee shall be under no further obligation to make available to Programmer any further broadcast time or broadcast production or transmission facilities; (ii) Programmer's obligation to purchase time on the Station shall be terminated; and (iii) Programmer shall be responsible for all debts and obligations of Programmer resulting from the reservation or use of air time and transmission facilities during the term of this Agreement through the date of termination or expiration (including payments due to or accrued by Licensee); (iv) Programmer, in the event termination results from Programmer's default in payment of the Master Fee, shall, in accordance with **Section 3.2**, assign Programmer's Receivables to Licensee; (v) Programmer shall withdraw from the Station's facilities and premises, without harm or damage to said facilities and premises, within ten (10) days after the Termination Date; and (vi) the Parties will comply with the provisions of **Schedule A**.

13.3.2. ***No Impairment of Rights.*** No expiration or termination of this Agreement shall limit or impair any Party's rights to receive payments due and owing hereunder on or before the date of such termination.

13.3.3. ***Comprehensive Termination.*** In the event this Agreement is terminated in accordance with this **Section 13**, then all Ancillary Agreements, then in effect, if any, likewise also shall be terminated, effective as of the termination of this Agreement.

13.4. ***Termination Procedure.*** Termination under this Agreement may only be accomplished in writing that is served upon the other Party to this Agreement in accordance with the provisions of **Exhibit 2, Section 11**, hereof. Unless otherwise provided in the termination notice, termination, subject to this **Section 13** and its subparts, shall be effective as of the day that written notice of such termination is received by the Party to whom the termination notice is directed.

13.5. ***Notice of Termination.*** In the event this Agreement is terminated under **Sections 13.1** or **13.2**, and the respective sub-parts to those Sections, the Party terminating the Agreement shall give written notice of such termination to the other Party. Notice shall be given as much in advance as reasonably possible, but in any event should not be less than ten (10) Business Days prior to the intended Termination Date.

14. ***Force Majeure.*** No failure or impairment (*i.e.*, failure to broadcast at the Station's full authorized height and power) of the facilities of the Station or Programmer or any delay or interruption in the broadcast of the Programming, or failure at any time to furnish facilities or Programming, in whole or in part, for broadcasting, due to acts of God, or terrorists, strikes or threats thereof or *force majeure* or due to other causes

beyond the reasonable control of Licensee or Programmer shall constitute an Event of Default under this Agreement.

14.1. **Cessation of Operations.** Notwithstanding the foregoing, in the event that there shall be any casualty or damage due to fire, earthquake, flood or act of God sufficient to preclude operations of the Station for a period of: (i) eight (8) consecutive days, or (ii) fourteen (14) days, in total in one month, then Programmer may terminate this Agreement on three (3) Business Days' written notice to Licensee.

15. **Indemnification.** Each Party will indemnify and hold harmless the other Party, and its respective Agents, from and against any and all liability and Damages, including, without limitation, all consequential damages and reasonable attorneys' fees, arising out of or incident to (i) any material breach by such Party of a representation, warranty or covenant made herein, (ii) the programming of any nature (including the Programs) produced and/or furnished by such Party hereunder, (iii) the conduct of such Party, its employees, contractors, agents or invitees in performing its obligations hereunder, (iv) any FCC violations resulting from the failure by either Party to carry out its obligations hereunder, or (v) any uncured event of default hereunder caused by such Party. Without limiting the generality of the foregoing, each Party will indemnify and hold harmless the other Party, and its respective Agents, from and against any and all liability for libel, slander, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from the programming produced or furnished by it hereunder. The Parties' indemnification obligations hereunder shall survive any termination or expiration of this Agreement. Licensee and Programmer will each hold the other harmless for any violation of the Rules and Regulations, and Programmer will indemnify Licensee for any violation of the Rules and Regulations that is wholly attributable to, or caused by, Programmer. The Prevailing Party in any dispute shall be entitled to recover its reasonable legal expenses, including attorneys' fees (at trial and on appeal) from the losing Party.

16. **Authority.** Programmer and Licensee each represent and warrant to the other that (i) it has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; (ii) it is duly organized, validly existing, has filed all reports required under law and no notice of dissolution or expiration has been filed or taken place with respect to it, and is qualified to do business in all jurisdictions where the nature of its business requires such qualification; (iii) it has duly authorized this Agreement, and this Agreement is binding upon it; and (iv) the execution, delivery, and performance by it of this Agreement does not conflict with, result in a breach of, or constitute a default or ground for termination under any agreement to which it is a party or by which it is bound.

17. **Disputes; Final Termination.** A dispute over the payment of the Master Fee shall not relieve Programmer of the obligation to make the Master Fee payments in a full

and timely manner. Consistent and in accordance with the Rules and Regulations, any dispute concerning termination pursuant to this Agreement shall be resolved by binding arbitration pursuant to the rules of the American Arbitration Association. The Prevailing Party shall be entitled to reimbursement from the non-prevailing Party of all reasonable expenses actually incurred to comply with this arbitration provision. In the event of a dispute under this Agreement, Programmer shall satisfy its payment obligations under **Section 2** if payments during the dispute are made by Programmer to a Dispute Escrow Agent. Unless otherwise hereafter provided, the Dispute Escrow Agent shall be **KALIL & COMPANY**. Subject to the Rules and Regulations, the Parties shall have the right specifically to enforce the performance of the other Party under this Agreement without the necessity of posting any bond or other security, and the Parties each hereby respectively waive the defense in any such action that Licensee or Programmer has an adequate remedy at law and the Parties agree not to interpose any opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

18. ***Certification.*** Licensee verifies that it maintains ultimate control over the facilities of Station; including ultimate control over the Station's facilities, and specifically control over station finances, personnel and programming. Licensee and Programmer hereby certify that they each respectively verify that this Agreement complies with the provisions of Title 47 C.F.R. Section 73.3555(b), (c) and (d).

19. ***General and Governing Provisions.*** In addition to the definitions set forth in **Exhibit 4** other provisions that shall govern the operation and interpretation of this Agreement are set forth on **Exhibit 2**, and are incorporated herein.

20. ***Listing of Exhibits and Schedules.***

EXHIBIT / SCHEDULE	DESCRIPTION
Exhibit 1	Intentionally Omitted
Exhibit 2	Miscellaneous Governing Provision
Exhibit 3	Listing of Individuals and Entities to Receive Notice
Exhibit 4	Definitions
Schedule A	Fees and Payments

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[SIGNATURE PAGE TO LOCAL MARKETING AGREEMENT]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

PROGRAMMER: **SINO TELEVISION, INC.**

By

Name: Arthur Liu

Title: President

LICENSEE: **MTB SAN FRANCISCO OPERATING**

By

Name: Lee W. Shubert, LC

Title: Trustee of Multicultural Capital Trust, Sole
Member of MTB San Francisco Operating
LLC

EXHIBIT 1-Intentionally Omitted

EXHIBIT 2— MISCELLANEOUS GOVERNING PROVISIONS

1. **Assignability; No Third Party Rights.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns. Notwithstanding the foregoing, this Agreement may only be assigned by Licensee to a third party who acquires substantially all the assts of Licensee. Programmer may not assign this Agreement without the express written consent of Licensee. *It is expressly agreed that upon the closing of the pending sale to NRJ TV SanFran OpCo, LLC ("NRJ") this Agreement shall be automatically be assigned to NRJ or its affiliate, subsidiary or designee without any additional consent needed by either party to this Agreement.*

2. **Confidentiality.** Each Party agrees that any and all non-public information learned or obtained by it from the other shall be confidential and agrees not to disclose any such information to any person whatsoever other than as is necessary for the purpose of effecting this Agreement, or as otherwise required by law.

3. **Construction.** This Agreement will be construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

4. **Counterpart Signatures.** This Agreement may be signed in one or more counterparts, each of which will be deemed a duplicate original.

5. **Entire Agreement.** This Agreement embodies the entire agreement, and supersedes all prior oral or written understandings, between the Parties with respect to the subject matter of this Agreement.

6. **Explication.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any gender include any other gender, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Agreement, unless otherwise specified. Any reference in or to this Agreement includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

7. **Further Assurances; Cooperation.** After the Commencement Date, each of the Parties, upon the reasonable request of the other, will take such reasonable actions or deliver or execute such further documents, materials, signatures, or information as may be reasonably necessary to assure compliance with, or effectuation of, the terms and conditions to this Agreement and the *bona fide* good faith intentions of the Parties hereto. Each Party will cooperate

with the other with respect to establishing and attaining the strategic and operational goals of the Station.

8. **Headings.** The headings of the various provisions of this Agreement are included for convenience only, and no such heading shall in any way affect or alter the meaning of any provision.

9. **Interpretation of Agreement.** This Agreement is the product of negotiation and preparation by, between and among Programmer and Licensee and their respective attorneys. Accordingly, the Parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one Party or another, and shall be construed accordingly.

10. **Modification and Waiver; Remedies Cumulative.** No modification of any provision of this Agreement will be effective unless in writing and signed by all Parties. No failure or delay on the part of Programmer or Licensee in exercising any right or power under this Agreement will operate as a waiver of such right or power, nor will any single or partial exercise of any such right or power or the exercise of any other right or power. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and are not exclusive of any other rights or remedies which a Party may otherwise have.

11. **Notice.** All notices, demands, requests, or other communications which may be or are required hereunder shall be in writing, including by facsimile or e-mail, and any payment, notice or other communications (hereafter collectively, "Notice") shall be delivered personally, or mailed by certified mail, postage prepaid, with return receipt requested, or delivered by overnight air courier, or where applicable transmitted by facsimile transmission and shall be deemed to have been duly delivered and received on (i) the date of personal delivery, (ii) the third (3rd) day after deposit in the U.S. mail if mailed by certified mail, postage prepaid and return receipt requested, (iii) the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery. If the Notice is dispatched by (a) facsimile transmission, then the facsimile transmission confirmation shall be deemed conclusive evidence of such dispatch, or (b) electronic mail with such notice attached in Portable Document Format (PDF) and sent with requests for delivery and read receipts, then the return of such receipts shall be deemed conclusive evidence of such dispatch. In each case Notice shall be addressed to the persons, Parties or entities identified on **Exhibit 3**, hereto.

11.1. **Alternate Addressees.** Notice, as provided by this Section, may be given to any other person or party, as any Party hereto may in the future designate in writing, upon due notice to the other party(ies).

11.2. ***Date of Notice, Action.*** The receipt for deposit with the U.S. Mail or courier service specified herein shall establish the date of such notification or communication. If any notification, communication or action is required or permitted to be given or taken within a certain period of time and the last date for doing so falls on a Saturday, Sunday, a federal legal holiday or legal holiday by law in the State of New York, the last day for such notification, communication or action shall be extended to the first date thereafter which is not a Saturday, Sunday or such legal holiday.

12. ***Publicity.*** The Parties agree to cooperate in coordinating any public announcement or other publicity regarding their activities under this Agreement. Licensee will place a copy in the Local Public File.

13. ***Relationship of Parties.*** Neither the Programmer nor Licensee will be deemed to be the agent, partner, or representative of the other Party to this Agreement, and neither Party is authorized to bind the other to any contract, agreement, or understanding.

14. ***Schedules and Exhibits.*** All schedules, exhibits and riders attached to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if full set forth herein.

15. ***Subject to Laws; Partial Invalidity.*** The obligations of the Parties under this Agreement are subject to the Rules and Regulations and all other applicable laws. If any provision in this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if it did not contain such invalid, illegal, or unenforceable provision.

16. ***Successors and Assigns.*** Subject to the provisions of **Section 1** of this **Exhibit 1** above, this Agreement shall be binding upon and inure to the benefit of Licensee's successors and assigns. This Agreement shall also be binding upon and inure to the benefit of Programmer and its successors and assigns.

LISTING OF INDIVIDUALS AND ENTITIES TO RECEIVE NOTICE

Notice to be provided under this Programming Agreement shall be made to the following persons and addresses:

If to
Licensee: **MTB SAN FRANCISCO OPERATING
LLC**
c/o Lee W. Shubert, LC
11077 Swansfield Rd
Columbia, MD 21044-2724

[REDACTED]

With a
copy to * **Sciarrino & Shubert PLLC**
5425 Tree Line Drive
Centreville, VA 20120-1676

[REDACTED]

And a
copy to: * **Drawbridge Special Opportunities
Fund, L.P.**
c/o 10250 Constellation Boulevard
23rd Floor
Los Angeles, CA 90067

[REDACTED]

If to
Programmer: **SINO TELEVISION, INC.**
449 Broadway
2nd Floor

[REDACTED]

With a copy
to: * **Lerman Senter P.L.L.C.**
2000 K Street, N.W.
Suite 600
Washington, DC 20006

[REDACTED]

*which shall not constitute notice.

DEFINITIONS

The capitalized terms in this Agreement, unless otherwise defined, shall have the following meaning(s).

1. **Act.** The terms “Act” or “the Act” shall mean and refer to the Communications Act of 1934, as amended.

2. **Accounts Receivable.** The term “Accounts Receivable” means the rights of either Party to payment for services performed by that Party for advertising and commercial clientele of the Station as reflected on the billing records of the Station.

3. **Affiliate.** The terms “Affiliate” or “Affiliates” means any entity or person, directly or indirectly, owning or controlling, or that is owned or controlled by, or under common ownership or control with, either Licensee or Programmer.

4. **Agents.** The term “Agents” shall mean and refer collectively to the Parties’ respective trustors, trustees, beneficiaries, predecessors, successors, assigns, Affiliates, members, partners, partnerships, affiliated and related entities, officers, directors, principals, shareholders, agents, servants, employees, representatives, and all persons, firms, associations, and/or corporations connected in any way with them, including without limitation their insurers, sureties, attorneys, consultants, and experts, and each and every one of them.

5. **Agreement.** The term “Agreement” shall mean and refer to this Programming Agreement among MTB SAN FRANCISCO OPERATING LLC, and SINO TELEVISION, INC.

[REDACTED]

7. **Broadcasting Period.** The term “Broadcasting Period” shall mean the time Sunday through Saturday, up to twenty-four (24) hours per day, seven (7) days per week of each week (i.e., 168 hours) during the Term, subject, however, to the provisions of **Section 3.1.1** of this Agreement.

8. **Business Day.** The term “Business Day” means any calendar day, excluding Saturdays and Sundays, on which federally chartered banks in the city of San Francisco, California, are regularly open for business. Should any event or payment be scheduled for, or fall upon, or be due on a day other than a Business Day, then said event or payment shall occur and/or be due on the very next Business Day thereafter.

9. **Claim.** The term “Claim” means any demand, suit, claim or assertion of liability by a third party that is subject

to indemnification by the indemnifying Party under this Agreement.

10. **Commencement Date.** The term “Commencement Date” shall mean that certain date, identified in **Section 1** of this Agreement, on which the Term of this Agreement shall begin.

11. **Closing Event.** The term “Closing Event” means any meeting or event at which Licensee meets with a third-party (including Programmer, if applicable) subject to a purchase agreement, to consummate and effectuate the sale, conveyance, and assignment, for consideration received, of the Station’s FCC authorizations and the Station’s assets.

12. **Damages.** The term “Damages” means any and all losses, damages, costs, liabilities and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by Licensee or Programmer in connection with a claim for indemnification.

13. **Dedicated Spectrum.** “Dedicated Spectrum” means the Digital Sub-Channel, i.e., that spectrum capacity dedicated to Programmer not less than [REDACTED] on the Digital Sub-Channel and is broadcast on continuous, uninterrupted basis during each twenty-four hour (24) period.

14. **Digital Sub-Channel.** The term “Digital Sub-Channel” shall mean and refer to that portion of spectrum that is not designated as the prime transmission channel and is not used or considered as the principal choice for reception and/or viewing purposes. The Digital Sub-Channel being programmed by Programmer is D-2 or Channel 39.2.

15. **Dispute Escrow Agent.** The term “Dispute Escrow Agent” shall mean and refer to that entity to which Programmer shall pay its obligations under **Section 2** of this Agreement, if there is a dispute concerning any Master Fee payment, so that Programmer may avoid an Event of Default. The Dispute Escrow Agent shall be **KALIL & COMPANY**.

16. **DMA.** The term “DMA” means and refers to the San Francisco-Oakland-San Jose Designated Market Area as defined by A.C. Neilsen.

17. **DTV Spectrum.** “DTV Spectrum” means the digital television spectrum blocks currently allocated to San Francisco, California, in 47 C.F.R. § 73.622(b) and licensed by the FCC to the Licensee.

18. **Effective Date.** The term “Effective Date” shall mean and refer to the date shown in the initial paragraph of this Agreement which shall be the date on which Licensee and Programmer exchange counter-part signature pages each respectively signed by the parties.

19. **Exhibits.** The term “*Exhibits*” means the documents referred to in this Agreement, and attached hereto. Exhibits are documents that are readily available to the public.

20. **FCC.** The term “*FCC*” shall mean and refer to the Federal Communications Commission, Washington, DC.

21. **FCC Licenses.** The term “*FCC Licenses*” means all licenses, permits and other authorizations which are issued to Licensee by the FCC with respect to the Station, and including any renewals or modifications thereof between the Commencement Date and the Termination Date.

22. **Final Order.** For the purposes of this Agreement, “*Final Order*” means the action of the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) which is no longer subject to administrative or judicial review, reconsideration or appeal, *i.e.*, such action shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or *certiorari* or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, *certiorari* or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

23. **Foreign Language Programs.** The term “*Foreign Language Programs*” shall mean and refer to any Program scheduled or proposed for broadcast on the Station which primarily or completely is in a language other than English.

24. **Immediately Available Funds.** The term “*Immediately Available Funds*” means cash, a certified bank cashier’s check, or funds immediately available by wire transfer, all in, or payable in, the valid currency and legal tender of the United States.

25. **Leased Spectrum.** The term “*Leased Spectrum*” means the Dedicated Spectrum.

26. **Licensee.** The term “*Licensee*” shall mean and refer to MTB SAN FRANCISCO OPERATING LLC.

27. **Licensee’s Receivables.** The term “*Licensee’s Receivables*” means the Accounts Receivable of the Station that are not Programmer’s Receivables.

28. **Local Advertising.** The term “*Local Advertising*” shall mean and refer to locally inserted advertising; promotional announcements; public service announcements; and station identification announcements, which may be available in programming supplied by RTN, or other programming on the Station.

29. **Local Public File.** The term “*Local Public File*” shall mean and refer to the Station’s public inspection file as specified in Section 73.3526 of the Rules and Regulations.

30. **Main Studio.** The term “*Main Studio*” means any space and/or facilities that are maintained for use as the principal studios and offices of the Station.

31. **Master Fee.** The term “*Master Fee*” shall mean and refer to that fee that is payable by Programmer to Licensee as provided in **Section 2**, of **Schedule A** to this Agreement.

32. **Master Fee Adjustment(s).** *Master Fee Adjustment(s).* The term “*Master Fee Adjustment*” shall mean and refer to an amount, equal to the value of any preempted Programs, computed on a pro rata basis by multiplying the Master Fee by a fraction, the numerator of which shall be the total time of preempted programs during any Broadcasting Period and the denominator of which shall be the total amount of time in the applicable Broadcasting Period for the month in which the preemptions occur. The resulting value from that calculation shall be credited back to Programmer by Licensee and applied against the next Master Fee payment due from Programmer. In the event that no other Master Fee payments are due from Programmer, then the Master Fee Adjustment shall be refunded to Programmer by Licensee. For the avoidance of doubt, if two (2) hours of Programs are preempted, such as in connection with a single occurrence that may transpire in connection with a Programming Reclamation, then an amount equal to one eighty-fourth (1/84th) of the Master Fee shall be credited to Programmer for each preemption exercised by Licensee. The Master Fee Adjustment shall be applicable to each occurrence of Licensee’s programs pursuant to a Program Reclamation.

33. **MBPS.** The term “*Mbps*” means megabits per second.

34. **Operating Expenses.** The term “*Operating Expenses*” shall have the meaning as defined in **Section 1.1** of **Schedule A** to this Agreement.

35. **Party.** The term “*Party*” or “*Parties*” shall mean and refer to the Licensee and/or Programmer.

36. **Performance Licenses.** The term “*Performance Licenses*” shall mean all copyright, music, performance, and/or royalty licenses that are reasonably necessary and/or required to legitimately broadcast the Programs or any other content on the Station.

37. **Prevailing Party.** The term “*Prevailing Party*” means the Party that is successful in obtaining substantially all the relief sought in the event of a dispute, Claim or indemnification.

38. **Programmer.** The term “*Programmer*” shall mean and refer to SINO TELEVISION, INC.

39. **Programmer’s Receivables.** The term “*Programmer’s Receivables*” means all the Accounts Receivable resulting from Programmer’s operations on the Digital Sub-Channel for the period beginning on the Commencement Date and ending as of 12:01 a.m. Pacific Time on the Termination Date. The Programmer’s Receivables shall be attributable to, owned and claimed by Programmer; *provided, however*, that in the event this Agreement is terminated due to Programmer’s default in payment of the Master Fee then on, and as of, the Termination Date, and in accordance with **Section 3.2**, all Programmer’s Receivables shall become and be Licensee’s Receivables.

40. **Programming Reclamation.** The term “*Programming Reclamation*” shall mean and refer to a two-hour portion of the Broadcasting Period, to occur between 5:00 a.m. and 7:00 a.m. on Sunday mornings during the Broadcasting Period, in which Licensee elects, in accordance with the

provisions of **Section 3.1.1**, to insert on the Digital Sub-Channel and on a permanent basis throughout the life of this Agreement, programming content exclusively of Licensee's choice.

41. **Program Pertinent Communications.** The term "*Program Pertinent Communications*" shall mean any and all mail, e-mail, facsimiles, cables, telegraph or telephone calls received by the Station in connection with the programming broadcast on the Station during the Term.

42. **Programs.** The term "*Programs*" shall mean and refer to the broadcast content and programming of every nature that Programmer broadcasts on the Digital Sub-Channel, including but not limited to the nature of educational, entertainment or variety, public affairs, commentary or editorial, news, sports, weather, vehicular traffic information, general information, business, designed for children, live or recorded, that Programmer either produces, owns or owns the broadcast rights, and which are intended by Programmer for broadcast on the Station.

43. **Receivables.** In the event this Agreement is terminated due to Programmer's default in payment of the Master Fee, then on, and as of, the Termination Date and in accordance with **Section 3.2**, Programmer's Receivables shall be assigned to Licensee and shall become and be Licensee's Receivables.

44. **Renewal Term.** The term "*Renewal Term*" means an

[REDACTED]

45

[REDACTED]

46

[REDACTED]

47. **Rules and Regulations.** The term "*Rules and Regulations*" means the rules of the FCC as set forth in Title 47 of the Code of Federal Regulations, as well as such other policies of the FCC, as required or permitted by the Act, whether contained in the Code of Federal Regulations, or not, that apply to the Station.

48. **Schedules.** The term "*Schedules*" means the documents referred to in this Agreement and contained in a separate volume of schedules dated, initialed by, or on behalf of, the Parties, and delivered by Licensee to Programmer concurrently with the execution of this Agreement. Schedules are proprietary documents that are not routinely or readily available for public review.

49. **Station.** The term "*Station*" means commercial Television Station KCNS, San Francisco, California (FCC Facility ID No. 71586).

50. **Term.** The term "*Term*" shall mean the period of time during which this Agreement is in effect, beginning at 12:01

a m. Pacific Time on the Commencement Date, as defined in **Section 1** and ending at 11:59 p.m. Pacific Time on and as of the Termination Date.

51. **Termination Date.** The term "*Termination Date*" means the effective date on which this Agreement shall expire or shall be terminated for whatever reason.

SCHEDULE A
To
PROGRAMMING AGREEMENT

TELEVISION STATION KCNS (DTV CHANNEL 39)
SAN FRANCISCO, CALIFORNIA (FCC FACILITY ID No. 71586)

FEES AND PAYMENTS

1. ***Operating Expenses.*** Beginning with the Commencement Date and throughout the Term of this Agreement Licensee shall pay those expenses specified in the body of this Agreement including, without limitation, one hundred percent (100%) of Licensee's Operating Expenses, as defined below.

1.1. ***Operating Expenses Defined.*** The term "*Operating Expenses*" means the legitimate and prudent expenses incurred by Licensee in operating and maintaining the Station during the Term of this Agreement, in each case except as otherwise provided below or elsewhere in this Agreement to include, but not be limited to: studio rents, studio utilities (including telephone charges), property taxes with regard to the Station's property, building maintenance, engineering fees incurred by Licensee in the maintenance of the Main Studio or operation of the Station, board operators, professional fees, casualty and liability insurance premiums with respect to insurance policies required of Licensee respecting the Station in prudent amounts consistent with current prevailing industry standards or practices regarding commercially reasonable premiums for the Station, Performance License fees (*e.g.*, ASCAP, BMI and SESAC), production music license fees and royalties that pertain to Licensee's programs broadcast on all channels other than the Digital Sub-Channel or programming inserted by Licensee pursuant to **Section 3.1.1 and Section 6.2.1** (and specifically subject to the provisions of **Section 9** of this Agreement), and software license fees, license fees for rating companies, FCC annual regulatory fees, programming, production and operating costs incurred by Licensee in respect of any of Licensee's programs to be aired on the Station or the operation of the station as of the Commencement Date, and expenses pertaining to the maintenance and operation of the Station's transmission system, including tower rents, utilities for the operation of the Station's transmitter or any auxiliary antenna, engineering fees incurred in connection with the maintenance or operation of the Station's transmitter or transmission system, all of such expenses which are incurred or become due during the Term. It is understood and agreed that the foregoing itemization is illustrative and not inclusive of the Operating Expenses that may be incurred by Licensee in the performance of its obligations under this Agreement.

1.2. ***Other Licensee Expenses.*** Anything to the contrary contained herein or in this Agreement notwithstanding, Licensee also shall be responsible for (i) Licensee's

income, franchise and similar taxes; (ii) interest on and principal of loans and/or indebtedness and other fees, charges, costs and expenses relating to loans and/or indebtedness; and (iii) depreciation and amortization expenses.

1.3. **Excluded Expenses.** Anything to the contrary contained herein or in this Agreement notwithstanding, the Operating Expenses shall **not** include any expenses incurred by Programmer in the acquisition, production, and delivery of the Programming to the Digital Sub-Channel, including any contracts respecting which the Programmer, rather than the Licensee, is the contracting party.

2. **Master Fee.** As consideration for Licensee's continued performance of its obligations under this Agreement, Programmer promptly shall pay and deliver to Licensee, payments as follows: [REDACTED]

[REDACTED] beginning on the Commencement Date, and continuing throughout the Initial Term. For the Renewal Term, if applicable, the Master Fee quarterly payments shall be as follows: [REDACTED]

2.1. **Payment Allocation – Refund.** Pursuant to Section 2.1 of Schedule A of that certain now-terminated Local Marketing Agreement between Licensee and Programmer dated as of December 31, 2009 ("LMA"), Programmer has made an advance deposit to Licensee of [REDACTED] (the "Deposit"), which amount Licensee is currently obligated to remit to Programmer pursuant to Section 7 of Appendix A of the LMA in light of the LMA's early termination. Licensee shall retain [REDACTED] to serve as Programmer's pre-payment for the first calendar quarter under this Agreement, and Licensee shall remit the remaining [REDACTED] to Programmer on the earlier to occur of (i) the Closing Date respecting the now-planned sale of the Station to NRJ TV San Fran License Co, LLC, pursuant to FCC consent to BALCDT-20110131AOD, or (ii) May 31, 2011.

The Master Fee shall be subject to Master Fee Adjustments in accordance with Sections 3.1.1 and 6.2.2, of this Agreement. These payments shall mean and collectively be referred to in this Agreement as the "*Master Fee*."

3. **Materiality of Payments.** It is understood and agreed by the Parties that the timely payment to Licensee by Programmer of any Master Fee installments are material elements of this Agreement.

3.1. **Late Payment Penalty.** In the event Programmer fails to pay the quarterly Master Fee on or before the tenth (10th) day after such payment is due, then Pro-

grammer shall be obligated to additionally tender and pay a late payment penalty of ten percent (10%) of the amount of the payment then due, by means of Immediately Available Funds. A late payment penalty of shall be included by Programmer with any payment that is untimely or overdue when paid.

4. ***Disputes Generally.*** In the event of a reasonable dispute over the amount of any payment hereunder because of adjustment, *e.g.*, for preemption, prorations or *force majeure*, the dispute shall be resolved as provided in **Section 17** of this Agreement.

5. ***Grace Period/Notice.*** Anything to the contrary contained herein or in this Agreement notwithstanding, Programmer shall be entitled to a grace period of five (5) calendar days for each payment to be made under this Agreement. If, after the grace period default is not cured within five (5) days after receipt of written notice of default, the Licensee may at its option declare Programmer in default and pursue such remedies as may be available to it, including the termination of this agreement.

6. ***Mode of Payment.*** All payments by Programmer under the terms of this Agreement shall be in the form of Immediately Available Funds.

7. ***Early Termination.*** Should this Agreement be terminated prior to the end of each calendar quarter for any reason except Programmer's default in payment of the Master Fee, then the Master Fee shall be prorated for that portion of the calendar quarter during which the Agreement is in effect, and Licensee shall remit to Programmer any portion of the Master Fee for that calendar quarter that has been paid in advance for the portion of the calendar quarter occurring after the Agreement has been terminated.